

KATHY J. KEPFORD
Claimant

AMAZON.COM

Respondent

ROYAL INDEMNITY

Insurance Carrier

ORDER

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board makes the following findings and conclusions:

On December 17, 1999, claimant was employed by the respondent processing gift wrap paper to be shipped to customers. She worked the 5:30 p.m. to 4:00 a.m. shift. The respondent limited claimant to a 15-minute break in the breakroom located “a long ways away.” At the 8:00 p.m. break on December 17, 1999, the claimant testified she was hurrying up metal catwalk steps leading to the breakroom when her right knee buckled, pulled, and she fell down. After the break, claimant notified her supervisor of the incident but did not seek medical treatment until later.

Respondent sent the claimant to Adnan Khan, M.D. The medical records admitted into the preliminary hearing record indicate that claimant saw Dr. Khan’s physician assistant on February 18, 2000. An MRI examination was ordered and the claimant was referred to M.S. Shakil, M.D.

Dr. Shakil saw claimant on February 28, 2000. He reviewed the February 21, 2000, MRI examination and found claimant’s right knee with effusion and a tear of the medial meniscus. Arthroscopic medial menisectomy was determined to be the appropriate treatment. But the surgery was not scheduled because respondent’s insurance carrier would not authorize the treatment. Work restrictions were imposed and the respondent could not accommodate those restrictions. Claimant has not worked since March 20, 2000.

The respondent acknowledges that claimant’s right knee injury occurred “in the course” of her employment. But respondent denies the injury arose “out of” the employment. Respondent argues there is no evidence in the record that proved there was any casual relationship between the claimant’s employment and her injury.

Claimant, however, argues the act of hurrying and climbing the metal cage catwalk stairs in order to get to the breakroom located a long distance from her work area caused her right knee injury. This particular act was performed on a regular basis and is related to claimant’s work. Therefore, claimant argues her right knee injury arose out of her employment with respondent.

The respondent argues the facts in this case are analogous to the Martin¹ case. In Martin, the Court of Appeals held claimant’s back injury was caused by a personal risk and, therefore, not related to his employment. The claimant, in Martin, had a history of back problems and the court held the mere exiting of the truck could not have caused his resulting back injury. The respondent also argues that claimant’s right knee injury should be compared to a claimant suffering a heart attack at work or suffering a idiopathic injury at work, which are not considered compensable incidents.

¹See Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

In this case, the Appeals Board finds that there is no evidence in the preliminary hearing record that claimant had preexisting symptoms or any other preexisting problems with her right knee until the December 17, 1999, incident at work. This distinguishes claimant's case from Martin, because the court, in Martin, determined that claimant's injury was caused by a personal risk, i.e., his preexisting back problems, and not from his activities at work. The worker who suffers a heart attack at work does suffer a compensable injury, if it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work.² The Court of Appeals has found a claimant's injuries compensable when he suffered an epileptic seizure, blacked out, and hit a tree. The Court of Appeals found the claimant's accidental injuries arose out of his employment because the driving of the truck placed claimant in a position of increased risk.³

The Appeals Board concludes that claimant injured her right knee while performing an act that is normally and commonly an incident to her employment. Claimant's right knee was injured as she was hurrying up the metal catwalk stairs on her way to the breakroom located a long distance from her work area. If the worker is at work and is injured either while actually doing the job or while performing an act that is normally and commonly incident to the injury, the injury "arises out of" the employment. Any other construction would undermine the act and lead to absurd results.⁴

The Appeals Board concludes the Administrative Law Judge's preliminary hearing Order Denying Compensation should be reversed. The Appeals Board finds claimant's right knee injury did arise out of her employment with respondent. The case is remanded to the Administrative Law Judge to decide the remaining issues in regard to claimant's request for temporary total disability compensation and medical treatment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Brad E. Avery's May 24, 2000, preliminary hearing Order Denying Compensation should be reversed, and remanded to the Administrative Law Judge to decide the remaining issues in regard to claimant's entitlement to temporary total disability compensation and medical treatment.

²See K.S.A. 44-501(e).

³See Bennett v. Wichita Fence Co., 16 Kan. App. 2nd 458, 460, 824 P.2d 1001, *rev. denied* 250 Kan. 804 (1992).

⁴See Bailey v. Mosby Hotel Co., 160 Kan. 258, 267, 160 P.2d 701, (1945).

IT IS SO ORDERED.

Dated this ____ day of August 2000.

BOARD MEMBER

c: George H. Pearson, Topeka, KS
Clifford K. Stubbs, Lenexa, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director